

Contract



Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-684-1681 TTY Relay: 711

Contract Title: **WEB CONTENT MANAGEMENT**

Buyer: Kathleen Hilliard, Kathleen.hilliard@metrokc.gov, 206-263-4274
Senior IT Contracts Specialist Marilyn Pritchard
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Contract Number:	05-104KAH	Contractor:	
Federal Tax ID:		Requesting Dept.:	
Amount:		Fund Source:	
Duration:		To:	
Work Provided:			

CONTRACT

THIS CONTRACT, made this _____ Day of _____, 2005, by and between King County, Washington, (hereinafter "County") and _____ with its principle place of business at _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No.: _____

Contract Title: _____

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and Services in a timely manner and that its Proposal includes all of the functions and features required for the goods and Services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and Services in accordance with the Contract's terms, Scope of Work and Proposal documents;

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and Services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price Provided herein for the supply of the goods and Services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence; **[1]** Contract Amendments; **[2]** the Contract Document which includes: Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Scope of Work, Attachments A) Contractor Registration Form, Exhibit B) Contract Price, C) Domestic Partners Benefits "Declaration" Form, D) Personnel Inventory Report, E) Affidavit and Certificate of Compliance, (M) Consultant Disclosure Form, N) 504/ADA Assurance of Compliance, O) Source Code Escrow Agreement, P) Software Maintenance Agreement, Q) Software Licensing Agreement R) Non-disclosure Form, Contractor's Insurance Forms; and **[3]** RFP Addenda; **[4]** Request for Proposals; **[5]** Best and Final Offer; **[6]** the proposal.

COMPANY NAME: _____

ACCEPTED BY:

Authorized Signature

Name and Title (Print or Type)

Date Accepted:

KING COUNTY APPROVED BY:

Signature

Name and Title (Print or Type)

Date Accepted:

Approved as to form only: _____

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ENCLOSURE:

[Attachment O – Source Code Escrow Agreement](#)

[Attachment P – Software and Equipment Maintenance Agreement](#)

[Attachment Q – Software Licensing Agreement](#)

[Attachment R – Nondisclosure Agreement](#)

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Administrative Change: Documentation provided by County to Contractor, which reflects internal King County procedures not affecting the Contract terms or Scope of Work.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Project Manager during Contract performance.

Change Documentation: A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as an Amendment.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page i of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of Services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Documentation: Technical publications relating to the use of the Software or Services to be Provided by Contractor under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Contractor to the County.

Enhancement: Technical or functional additions to the Software to improve Software Functionality and/or operations. Enhancements are delivered with new releases of the Software.

Error: An unanticipated Software problem resulting in program behavior not following the Software's logical design and/or Contractor's Documentation.

Final Acceptance: The point when King County acknowledges that the Contractor has preformed the entire Work in accordance with the Contract.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Previous Sequential Release: A release of Software for use in a particular operating environment that has been replaced by a subsequent release of the Software in the same operating environment. Contractor shall support a Previous Sequential Release. Multiple Previous Sequential Releases may be supported at any given time.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration. This Contract may be part of a larger County project.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Scope of Work or Statement of Work (SOW): A section of the Contract consisting of written descriptions of Services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Services: The furnishing of labor, time or effort by a Contractor, including Software Maintenance or Support, custom Software, or consulting but not involving the delivery of any specific manufactured goods.

Software: All or any portion of the then commercially available version(s) of the computer Software programs and Enhancements thereto, including source code, localized versions of the computer Software programs and Enhancements thereto, including source code and Documentation delivered by Contractor to the County.

Software Extensions: A modification to the standard panels, screens, workflow processing that are made by King County without changes to the source code.

Source Code: Means computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

System Integration: The installations and operations of all hardware, Software and communications components so that they function as a complete operational environment and in conjunction with each other as specified in the Contract.

Update: All published revisions to the Documentation and copies of the new release of the Software, which are not designated by Contractor as new products.

Upgrade: Subsequent releases of the Software and Documentation that generally have a new major version number, i.e. version 6.3 to version 7.0, not 6.3 to 6.4.

Virus: Software code that is intentionally and specifically constructed for the purpose of destroying, interrupting or otherwise adversely impacting other code or data in a computer, such as replicating itself or another program many times without any useful purpose.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Custom Applications/Software, Software, Hardware and Services specified under this Contract, including Contract Changes and settlements. Work includes Work Product.

Work Product: As used in subsection 2.19, Ownership/Rights to Work Product and Services, regarding County's rights to Work Product, includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.

SECTION 1 - STANDARD CONTRACTUAL TERMS AND CONDITIONS

1-1 Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

1-2 Contract Changes

No oral order or conduct by the County shall constitute a Contract change. Both parties shall agree to contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every contract change may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

1-3 Cost or Price Analysis

The County may require Cost or Price Analysis, contract changes, terminations, and revisions to contract requirements or other circumstances as determined by the County.

1-4 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A Notice to Cure shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination;
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for Services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this contract or a related Purchase Order to Provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

1-5 **Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

1-6 Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

1-7 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

1-8 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

1-9 Indemnification and Hold Harmless

A. Patent and Copyright Indemnity

The Contractor shall protect, indemnify, defend and save harmless the County from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the County gives Contractor prompt notice of any infringement claim brought against the County regarding the Software and the County gives Contractor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for the County the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Contractor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the County. Contractor shall have no liability to indemnify or defend the County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County but not by the contractor; or (ii) use of the Software other than in accordance with the Documentation. If the County is required to defend itself or enter into a settlement agreement due to Contractor's failure to defend, Contractor shall indemnify the County for its costs and expenses as well as any judgment entered against the County.

B. Indemnification For All Other Actions

Contractor shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to

Persons and/or damage to tangible property, arising out of or in any way resulting from the acts or omissions of the Contractor its officers, employees and/or agents. Contractor's indemnification obligation shall include but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. Limitation of Liability

Except for the County's intentional and willful violations of Contractor's intellectual or proprietary rights, which can be attributed to the County management, and injuries to persons by either party, neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under this Contract shall be limited to (1 X times) the value of the contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

1-10 Applicable Law and Forum

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

1-11 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

1-12 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

1-13 Mediation and Arbitration

Nothing in this subsection precludes any party from seeking relief from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

1-14 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).

3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. **Proof of Compliance with Contract**

The Contractor shall, upon request, provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

1-15 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

1-16 Recycled Products Policy

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

Ref: KCC 10.14

1-17 Conflicts of Interest - Current and Former Employees

The County seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former County employees in transactions with the County. Consistent with this policy, no current or former County employee may contract with, influence, advocate, advise, or consult with a third party about a County transaction, or assist with the preparation of Proposals submitted to the County while employed by the County or within one (1) year after leaving the County's employment, if he/she participated in determining the Work to be done or process to be followed while a County employee.

Contractors who anticipate contracting with the County shall identify at the time of offer, such current or former County employees involved in preparation of proposals or the anticipated performance of the Work if awarded the Contract. Failure to identify former County employees involved in this transaction may result in the County's denying or terminating this Contract. In addition, after award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract

Ref: KCC 3.04.015C; 3.04.035B; 3.04.035D; 3.04.035E; 3.04035H1; 3.04.035H2.

1-18 NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. **Nondiscrimination in Employment and Provision of Services.**

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the

administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices.

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Compliance with Laws and Regulations.

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits.

The County may, at any time, visit the Project Site, Contractors' and subcontractors' offices to review records related to the solicitation, utilization, and payment to subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to King County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance with this Section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

King County
Office of Business Relations and Economic Development
M.S. KCC-EX-0402
516 3rd Avenue, Room 550
Seattle, WA 98104-3271
Phone: 206-205-0700
Fax: 206-296-0194

1-19 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

1-20 Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

1-21 Non-Discrimination in Benefits to employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The successful Contractor, bidder or proposer shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms, and Ordinance 14823 are available online at: www.metrokc.gov/finance/procurement/forms.asp

SECTION 2 - SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2-1 Execution of the Contract

The documents constituting the Contract between the County and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 1. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County shall issue Purchase Orders detailing the Work to be performed.

The Contract may be executed in two counterparts, each of which shall be deemed an original and which shall together constitute one Contract.

2-2 Notices

All notices or Documentation required or Provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.

For Project Management related notices or Documentation

KING COUNTY	CONTRACTOR
Project Manager -	
Seattle, WA	
206-	
xxxxxx@metrokc.gov	

For Contract related notices or Documentation contact:

King County Procurement and Contract Services Section	
M.S. EXC-FI-0871	
Exchange Building, 8 th Floor	
821 Second Ave.	
Seattle, WA. 98104-1598	
Buyer -	
(206) 684-	
xxxxxx@metrokc.gov	

2-3 Payment Procedures

A. Invoices

The Contractor for Work Accepted by the County shall furnish invoices to:

King County Accounts Payable
M/S EXC-ES-0875

Exchange Building, 8th floor
821 Second Avenue
Seattle, WA 98104-1598

Important – When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract provide the: item number, quantity, description, contract price and when applicable provide the manufacture, list price and discounts. For Services identify from the bid, either milestone Acceptance or hourly rates, hours worked, total hours or related fees.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State Sales use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to Washington, or the County will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) Days from the receipt of each payment the Contractor receives from the County.

2-4 Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

2-5 Purchase Orders

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in Attachment B. The purchase orders issued by the County may reflect agreed to modification of Contract terms, funding or other matters subject to subsection 1-2, Contract changes.

2-6 Pricing

Prices shall remain firm for the duration of the initial Contract period. Reasonable price changes based on market conditions and price/cost analysis may be made after the initial Contract period. The Contractor shall supply documentation satisfactory to King County such as documented changes to the Producers Price Index (PPI), the Consumer Price Index (CPI) or a manufacturer's published notification of price change(s). King County will evaluate this information to determine if revising the pricing is considered fair and reasonable to the satisfaction of King County. Requests for any such change are to be made in writing to the Buyer in the Procurement Services Division office. Any agreed-to change shall take effect at the time of the Contract extension and shall remain in effect throughout the extension period. The parties hereto recognize that such changes could be increases or decreases in the prices; both parties are entitled to benefit from such price changes.

2-7 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

2-8 Cost Mark-Up

Contractors shall not mark up Subcontractor costs and other direct costs. The cost for Subcontractor management shall be segregated into a single cost item and included as a separate task in Exhibit B.

2-9 Direct Costs Related to Additional Work

Direct costs for additional Work shall be billed at cost without markup.

Reimbursement of Contractor travel, lodging and meal expenses are limited to the eligible costs based on the rates and criteria established in King County Code, chapter 3.24.

- A. The mileage rate allowed by King County shall not exceed the current Internal Revenue Services (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during Work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If a Person does not request government rates, he/she maybe Personally responsible for the difference. Please reference the IRS web site for current rates. <http://www.irs.gov/>.
- B. Reimbursement for meals shall be limited to the per diem rates established by Federal travel requisitions for the host city in the code of Federal Regulations, 41 CFR § 301,App.A.
- C. Accommodation rates shall not exceed the Federal Lodging limit plus host city taxes. The Contractor shall always request government rates.
- D. The direct costs contained in A, B and C above shall only be authorized by the County Project Manager for Contractor staff living beyond commuting distance, normally considered to be for the travel beyond 100 miles of 821 Second Avenue, Seattle, WA.
- E. Air travel shall be by coach class at the lowest price available at the time the County Project Manager requests a particular trip. In general, a trip is associated with a particular Work activity of limited duration and only one round-trip ticket, per Person, shall be billed per trip.
- F. Cost for equipment, materials and supplies, such as approved equipment rental; telephone, telegraph and cable expenses; reproduction costs including blueprinting, photographing, telecopying, mimeographing, photocopying and printing; express charges; commercial printing, binding, art Work and models; and, computer programming and data entry costs shall be billed without markup.
- G. Authorized subcontract Services; Provided that the limitations set forth in the above paragraphs shall be applicable to such subcontract Services.
- H. Other direct costs, not listed above, may be billed if the County has given prior approval.
- I. Receipts required for purchases \$10 and over, not including meals.

2-10 Acceptance Process

King County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Contractor will give the County “notice of completion” of Work related to a specific milestone following the Contractor’s completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. Acceptance process. Upon completion of the milestone deliverables the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the milestone guidelines. After notice by Contractor of completion of the milestone, County will issue a written notice of milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the Deliverable Guidelines.
- B. Correction of deficiencies process. If a deliverable is rejected, Contractor will have a commercially practicable time to correct items documented in the County’s notification of rejection. Following the delivery of Contractors’ notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Contractors’ second attempt to correct the Work and no clear plan can be agreed upon between the County Project Manager and the Contractor’s Project Manager, the County will determine the appropriate corrective actions.

2-11 Final Acceptance Process

The County shall begin the Final Acceptance process in accordance with the Contract as follows:

- A. The parties shall agree on the start date for the Acceptance test(s).
- B. The Acceptance Test(s) shall include thirty (30) continuous Days of operation of the Work without material defect in accordance with the Contract in the County’s fully implemented production environment, unless otherwise agreed to in writing by the County.
- C. If the County Accepts the Work, the County will send a notice of Final Acceptance to the Contractor.
- D. If County determines that the Work is not Acceptable, the County shall notify the Contractor in writing, describing the deficiencies.
- E. The Contractor shall either provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period with no charge to the County. The parties shall mutually agree on a start date for beginning another Acceptance test.
- F. Another thirty (30) Day successful operation period shall follow any corrections or replacements to the Work. Two or more thirty (30) day operation Acceptance test periods can occur if mutually agreed to by the parties.
- G. If the County Accepts the Work following a second or subsequent Acceptance test the County will send a notice of Final Acceptance to the Contractor.
- H. If the Contractor does not correct or replace the unacceptable Work the County may declare a breach of Contract.

2-12 Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.
- B. Warranty Term. The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors. The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

2-13 Express Warranties for Services

- A. Contractor warrants that the Services shall in all material respects conform to the requirements of this Contract.
- B. Contractor warrants that the Services shall be performed in a timely and professional manner by qualified professional personnel with in-depth knowledge; and that the Services shall conform to the standards generally observed in the industry for similar Services.
- C. Contractor warrants that the Services shall be in compliance with all applicable laws, rules and regulations.
- D. Contractor warrants that the performance of the Services and any Software Provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or Provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Contractor further warrants that neither the Software alone or through contact with the Contractor is capable of electronic self-help that may deprive the County of the use of the licensed Software.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2-14 Express Warranties for Software

- A. Software - Contractor warrants that on the date of Final Acceptance, the Software provided hereunder shall be free from significant programming Errors and when used in accordance with user manuals shall operate and conform to the Scope of Work, performance capabilities, functions

and other descriptions and standards as identified in this Contract and all supplemental information Provided by Contractor.

- B. Contractor warrants that it has full power and authority to license or sublicense the Software to the County without the consent of any other Person.
- C. Contractor warrants that the performance of the Services related to the Software and the licensed use of the Software by County as permitted by this Contract, including copying, shall not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other right of any third party.
- D. Contractor warrants that the Software, the License to the County to use the Software, instructions for use of the Software and the performance by Contractor of the Services, shall be in compliance with all applicable laws, rules and regulations.
- E. Contractor warrants the tapes, CD's, DVD's or other media delivered to the County to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the County.
- F. Contractor warrants that the Software provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or Provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Contractor further warrants that neither the Software alone or through Contract with the Contractor is capable of electronic self-help that may deprive the County of the use of the licensed Software.
- G. Contractor warrants that future maintenance or Software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or Software for continued operation of the Software.
- H. The Contractor warrants Functionality as described in the Scope of Work and represents that the configuration identified in the Contract document has been specifically selected and designed for the County as being an operationally efficient integration of hardware, Software and Services.
- I. Contractor shall be responsible for providing and implementing a Software system that is successfully integrated into the existing system environment of the County and meets the functional requirements as specified in this Contract.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2-15 Warranty Remedies

- A. If at any time during the twelve (12) Month period immediately following Final Acceptance of any Work covered by this Contract, Contractor or the County discovers one or more material defects or Errors in the Work or any other aspect in which the Work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, Error or nonconformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein.

- B. During the sixty (60) Day media warranty period, the County may return defective media to Contractor and it shall be replaced without charge to the County.
- C. In order to qualify for remedial action under these warranties, the County shall report a warranty failure to the Contractor in writing within thirteen (13) Months from the date of Final Acceptance. The Contractor shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the product(s) by the County or anyone other than the Contractor or its Subcontractors, unless under Contractor's or its Subcontractor's direction.
- D. Notice Required. The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected defect with thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case, the County shall charge-back the cost for such warranty repair to the Contractor.
- E. The Contractor is responsible for all costs of repair or replacement in order to restore the Work to the applicable Contract requirements or Scope of Work, including shipping charges, for Work found defective within the warranty period, regardless of who actually corrects the defect.

2-16 Defective Work

Prior to Final Acceptance, when and as often as the County determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within seven (7) Days of receiving such written notification, the Contractor shall supply the County with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The County may reject or accept this plan at its discretion. If the County rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

2-17 Software Warranty Process

During the warranty period, equipment and Software support shall be as described in the Maintenance Agreement, Attachment P.

2-18 Software Maintenance

After the Warranty period, Software Maintenance support shall be as described in the Maintenance Agreement, Attachment P.

2-19 Ownership/Rights to Work Product

- A. All data and Work (collectively called "Work Product") produced pursuant to this Contract shall be considered "work made for hire" under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by King County. Contractor is hereby commissioned to create the Work Product. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- B. If for any reason the Work Product would not be considered a "work made for hire" under applicable law, Contractor assigns and transfers to the County the entire right, title and interest in and to all

rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

- C. Contractor shall execute all documents and perform such other proper acts, as the County may deem necessary to secure for the County the rights provided pursuant to this section.
- D. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of the County. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- E. Work Product developed for this Contract including Preexisting Material needed to operate the Work Product shall be transferred to the County with a non-exclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license.

2-20 Patents, Copyrights and Rights in Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other Work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page, (or in such case of maps, in the name block), as may be requested by the County. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

2-21 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

2-22 Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

2-23 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

2-24 Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public.

If a Contractor considers any portion of the Work, including Software, data and related materials, delivered to the County to be protected under the law, the Contractor shall clearly identify each such item with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents. If the material is not exempt from public disclosure law, the County shall notify the Contractor of the request and allow the Contractor ten (10) Days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing this Contract, the Contractor assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

2-25 Board of Ethics Disclosure Requirement

Pursuant to King County code 3.04.120, the Consultant shall file a Contractor Disclosure Form with the Board of Ethics and the King County Executive, attached hereto as Attachment M.

2-26 No Prototype Components

All hardware, Software and Work, shall be in production and be used by customers comparable to the County at the time of the Contract effective date. Test or prototype items shall be clearly identified as such. A sufficient inventory of the Work shall be available to meet delivery requirements.

2-27 Patents and Royalties

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

2-28 Design Defects

The County shall declare a design defect in the event that the Software and/or the Work agreed to in this Contract does not meet the County requirements. The County shall notify the Contractor of the defect in writing; the Contractor shall provide a modification, redesign or a plan to correct the defect within fourteen (14) Days of receipt of the notification.

Period and terms for corrected items shall be the same as for the initial items purchased under this Contract. An extended Warranty on items determined to be design defects shall have the same term as the original warranty. This extended warranty shall begin on the correction of the defect.

If repairs or modifications made necessary by design defects are not completed for an extended period of time, the extended period of the lack of correction shall not be considered in computing the warranty end date. The same warranty shall remain in effect until a correction is implemented.

2-29 Changed Requirements

New Federal, State and County laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 3-2 Contract changes.

2-30 Counterparts

This Contract may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Contract.

2-31 Escrow Agreement

A source code escrow agreement in substantially similar form as Attachment O shall be executed as part of this Contract.

The Contractor shall maintain a current copy of the program source code with all future updates, improvements, additions and modifications.

In the event that the contractor ceases to support the programs, the escrow agent shall furnish King County, at no cost to the County, a copy of the relevant escrowed material as defined in the Escrow Agreement Attachment O. Any escrowed material furnished under this provision shall be considered licensed subject to the terms of this Contract.

2-32 Software License

Subject to the terms and conditions set forth in this Contract and the Software License Agreement, Attachment P, including payment of the license fees by County to Contractor, Contractor hereby grants to County a perpetual, non-exclusive, non-transferable license to use the Software, including any Software and source code released pursuant to the Escrow Agreement, Attachment O, as well as any Documentation and training materials.

2-33 Bug Status Reports

The Contractor shall Provide bug status reports specifying all known outstanding bugs in the current version of the Software. The initial bug status report shall accompany the Software when delivered. Subsequent reports shall be Provided Monthly or as agreed to by the County Project Manager.

2-34 Enhancements, Upgrades, Replacements and New Versions of Software

- A. The Contractor agrees to Provide to the County, at no cost, prior to, and during installation and implementation of the system any Software/firmware Enhancements, upgrades and replacements which the contractor initiates or generates.
- B. As long as the County has a maintenance agreement for the Software, the Contractor shall notify the County of the availability of newer versions of the Software and within thirty (30) Days supply the County with this new version. The new version shall be Provided to the County without charge. The Contractor shall Provide free Updated Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Documentation supplied and reflecting the changes included in the new version of the Software. The Contractor shall Provide Bug Status Reports specifying all known, outstanding bugs in the new Software versions. The information shall be Updated periodically as new information and Work-around become known. The Contractor shall also Provide free installation instructions, procedures and any installation program required by the installation.

2-35 HIPAA – Protecting Patient Privacy

The work under this Contract will require compliance with “The Health Insurance Portability and Accountability Act of 1996” (HIPAA). Information on this Act can be found at the Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

SECTION 3 - INSURANCE REQUIREMENTS

3-1 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County received notice at least 45 Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the County, deliver to the County all such policy of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/ Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

3-2 Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent Provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, Errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims made" basis, the contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.
- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

 - 1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.
 - 2. Automobile Liability

Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that Services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be Provided.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection Provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection Provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

The Contractor shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

2. Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in Aggregate.
3. Workers' Compensation: Statutory requirements of the state of residency.
4. Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. **Use the above exact language on the Endorsement Form.**

To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the contractor in any way.

The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

G. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

H. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

I. Endorsements

Additional Insured Endorsement must be included with insurance certificate. **The County requires this Endorsement to complete the Contract. CG 20 10 11/85 or its equivalent.**

SECTION 4 - SECTION - SCOPE OF WORK

4-1 Implementation

System configuration and prototyping is the primary responsibility of the Contractor. The core Software system shall be configured, prototyped, refined, tested, Updated and documented by the Contractor. The County shall accept the system for roll out only after a successful user Acceptance test is performed.

The Contractor shall not be relieved of its obligation to Provide a completely integrated system if the County creates interface programs.

4-2 Contractor Responsibilities

The Contractor shall be responsible for performing the Work described in the Scope of Work. Each written deliverable shall require an acceptable preliminary draft to precede Acceptance of deliverable and work completion.

ATTACHMENT O

SOURCE CODE ESCROW AGREEMENT

ESCROW AGREEMENT dated as of this _____ day of _____, 2005, by and among _____, organized and existing under the laws of the State of _____, and having its principal place of business at _____ (hereinafter "Licensor"); King County, organized and existing under the laws of the State of Washington and having its principal place of business at 700 5th Avenue, Seattle, WA (hereinafter the "County"); and _____, organized and existing under the laws of the State of Washington and having its principal place of business at _____ (hereinafter the "Escrow Agent").

WITNESSETH:

WHEREAS, the Licensor and the County have entered into a software agreement (hereinafter "License Agreement") dated _____, a copy of which is appended hereto and made a part hereof, pursuant to which the Licensor has licensed to the County certain computer software, including all updates, improvements, and enhancements thereof from time to time developed by the Licensor, and such additional program changes as the County may order from the Licensor from time to time, and all documentation therefor developed by the Licensor (hereinafter collectively referred to as the "Product"); and

WHEREAS, it is the policy of the Licensor not to disclose the source codes and related documentation (hereinafter collectively referred to as the "Source Code") for the Product to its customers except as provided in an applicable Escrow Agreement; and

WHEREAS, Licensor and the County agree that upon the occurrence of certain events described in Section 3(a) below, the County shall be able to obtain the Source Code and all revisions thereof, and accordingly, the Licensor agrees to deliver said Source Code to the Escrow Agent;

NOW, THEREFORE, in consideration of the mutual covenants exchanged herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Licensor, the County, and the Escrow Agent hereby act and agree as follows:

1. Deposits

The Escrow Agent, as a safekeeping escrow agent, agrees to accept from the Licensor the Source Code. The Escrow Agent will issue to the Licensor a receipt for the Source Code upon delivery. The Source Code held by the Escrow Agent shall remain the exclusive property of the Licensor, and the Escrow Agent shall not use the Source Code or disclose the same to any third party except as specified herein. The Escrow

Agent will hold the Source Code in safekeeping at its offices hereinabove indicated unless and until the Escrow Agent receives notice pursuant to the terms of this Agreement that the Escrow Agent is to deliver the Source Code to the County or Licensors, in which case the Escrow Agent shall deliver the Source Code to either Licensors or the County pursuant to the provisions of this Escrow Agreement.

2. Representations of Licensors to the County

Licensors represents and warrants to the County that:

(a) The material described in the attached Schedule A constitutes the Source Code and documentation for the Product licensed to the County pursuant to the License Agreement.

(b) The Source Code delivered to the Escrow Agent is in a form suitable for reproduction by computer and/or photocopy equipment, and consists of a full source language statement of the program or programs comprising the Product and complete program maintenance documentation, including all flow charts, schematics, and annotations which comprise the precoding detailed design specifications, and all other material necessary to allow a reasonably skilled third party programmer or analyst to maintain or enhance the Product without the help of any other person or reference to any other material.

(c) The Licensors will promptly supplement the Source Code with all revisions, corrections, enhancements, or other changes so that the Source Code constitutes a human-readable program for the then current release of the Product.

3. Notice of Default

(a) The Licensors shall be deemed to be in default of its responsibilities to County if:

(i) the Licensors is not able, at any time during the performance of Contract No. _____, to continue the contract for any reason, including, but not limited to, termination for non-performance; default in performance; or sale, assignment, or transfer of ownership of Contract No. _____ without the written authorization of the County; or

(ii) the Licensors is unable, at any time during the warranty period specified in the License Agreement, to correct any malfunction, defect, or nonconformity in any Product which prevents such Product from functioning in accordance with the applicable specifications, documentation, performance criteria, and other warranties and descriptions provided in the License Agreement, within 7-10 business days after the County's notification to Licensors specifying, in reasonable detail, how the Product fails to conform; or

(iii) the Licensor is unable to discharge any of its maintenance obligations with respect to any Product in accordance with the warranties or other standards for such maintenance set forth in any software maintenance agreement from time to time in effect between the Licensor and the County, within 7-10 business days after County's notification specifying in reasonable detail how the Product is not being maintained properly; or

(iv) the sale, assignment, or other transfer by the Licensor, without the prior written consent of the County, of such of the Licensor's rights in the Product as would prevent the Licensor from the discharge of its obligations with respect to the performance of the Product under the License Agreement during the warranty period, or from the discharge of its maintenance obligations with respect to the Product under any software maintenance agreement from time to time in effect between Licensor and County; or

(v) the Licensor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers, or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise, and County has compelling reasons to believe that such event(s) will cause Licensor to fail to meet its requirements under Contract No. _____, or warranty and maintenance obligations in the foreseeable future.

(b) The County shall give written notice (the "Notice of Default") to the Escrow Agent of any default by the Licensor. The Notice of Default shall, at the minimum, (i) be labeled "Notice of Default," (ii) identify the License Agreement and this Escrow Agreement, (iii) specify the nature of the default, (iv) identify the Source Code with specificity, and (v) demand the delivery of the Source Code to the County.

(c) Upon receipt of the Notice of Default, the Escrow Agent shall send a copy of the source code to the Licensor by certified or registered mail, postage prepaid, return receipt requested. If the Licensor desires to dispute the Notice of Default, the Licensor shall, within 7-10 days after the receipt of the copy of the Notice of Default from the Escrow Agent, deliver to the Escrow Agent with a copy to the County an Affidavit stating that no default has occurred, whereupon the provisions of Paragraph 5 hereof will become applicable. If the Escrow Agent receives the Affidavit within said 7-10 days, the Escrow Agent shall continue to hold the Source Code in accordance with this Escrow Agreement. If the Escrow Agent does not receive the Affidavit within said 7-10 days, the Escrow Agent is authorized and directed to deliver the Source Code to the County.

4. Notice of Termination

Upon the termination of the License Agreement for reasons other than non-performance or default on Contract _____, failure to perform the warranty provisions

or other events as more completely described in paragraph 3 herein, the Licensor may obtain the return of the Source Code by furnishing written notice of the termination, agreed to by authorized and notarized signature of the County.

5. Disputes

(a) In the event that Licensor files the required affidavit with the Escrow Agent in the manner and within the time period set forth in Paragraph 3(c) hereof, or if the County shall fail to agree that the License has been terminated, the Escrow Agent shall not release the Source Code to either party except in accordance with (i) a mediation agreement as hereinafter provided; (ii) receipt of an agreement with authorized and notarized signatures of both Licensor and County, authorizing the release of the Source Code to one of the parties; or (iii) a final decision by the King County Superior Court.

(b) Disputes arising under this Agreement shall be referred immediately to mediation. The mediation shall be conducted in Seattle, Washington. The Escrow Agent shall give prompt effect to any authenticated mediation agreement, notwithstanding the right of either party to seek, in King County Superior Court, enforcement or a stay of the mediation agreement based solely upon the failure of either party to comply with the mediation agreement.

(c) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.

6. Payment to Escrow Agent

As payment for its services hereunder, the Escrow Agent shall receive a fee in an amount agreed to by both parties or, if there is no agreement, in an amount specified by the arbitrator, to be paid by the Licensor.

6. Payment to Escrow Agent

As payment for its services hereunder, the Escrow Agent shall receive a fee in an amount agreed to by both parties or, if there is no agreement, in an amount specified by the arbitrator, to be paid by the Licensor.

7. Termination

This Escrow Agreement shall terminate on the delivery of the Source Code to either party in accordance with the terms of this Agreement.

8. Waiver, Amendment, or Modification; Severability

This Escrow Agreement shall not be waived, amended, or modified except by written agreement of all the parties hereto. Any invalidity in whole or in part, of any

provision of this Escrow Agreement shall not affect the validity of any other of its provisions.

9. Notices

All notices required to be given hereunder shall be in writing and shall be given by certified or registered mail, return receipt requested, to the parties at their respective addresses as provided in Contract No. _____.

10. Limitation on Escrow Agent's Responsibility and Liability

(a) The Escrow Agent shall not be obligated or required to examine or inspect the Source Code, or any of the Additions. The Escrow Agent's obligation for safekeeping shall be limited to providing the same degree of care for the Source Code as it maintains for its valuable documents and those of its customers lodged in the same location with appropriate atmospheric or other safeguards. However, the parties agree and acknowledge that the Escrow Agent shall not be responsible for any loss or damage to any of the Source Code due to changes in such atmospheric conditions, unless such changes are proximately caused by the gross negligence or intentional misconduct of the Escrow Agent, its employees, agents, or assigns.

(b) The Escrow Agent shall be protected when acting upon any written notice, request, waiver, consent, receipt, or other paper or document furnished to it, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be.

(c) In no event shall the Escrow Agent be liable for any act or failure to act under the provisions of this Escrow Agreement except where its acts are the result of its gross negligence or intentional misconduct. The Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless in writing received by it, and, if its duties are affected, unless it shall have given its prior written consent thereto.

(d) The parties to this Agreement hereby jointly and severally indemnify the Escrow Agent against any loss, liability, or damage, other than any caused by the gross negligence or intentional misconduct of the Escrow Agent, its employees, agents and assigns, including reasonable costs of litigation and counsel fees, arising from and in connection with the performance of its duties under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the year and date first above written.

(SEAL)

("Licensor")

Attest:

(SEAL)

By: _____

King County

Approved as to form:

Deputy Prosecuting Attorney

Attest:

(SEAL)

By: _____

("Escrow Agent")

Attest:

By: _____

[intellectescrow3.doc.rev.5/97]

SCHEDULE A

to be paid by: 30-45 days after Final Acceptance

Description of Materials Containing the Source Code and related Documentation:

[intellect\escrow3doc.rev.5/97]

ATTACHMENT P

SOFTWARE AND EQUIPMENT MAINTENANCE AGREEMENT

1. *Entire Agreement*

This Maintenance Agreement, as an Attachment to Contract No. _____, including Appendix A and all documents referenced herein, constitutes the entire agreement between Contractor and County and supersedes all proposals, oral and written, between the parties on this subject.

2. *The Services*

In consideration of the payments to be made to the Contractor, the Contractor agrees to provide the Services described in this Maintenance Agreement, including Appendix A or in any attachment hereto, with respect to the Software and equipment. The location(s) at which the Services shall be performed shall be as set forth in Appendix A.

3. *Applicability to Software License Agreement*

During the warranty period for the Licensed Software in Contract No. _____ between Contractor and County pertaining to the Software and equipment described in Appendix A, all of the provisions of this Maintenance Agreement shall be applicable without additional charge to the County.

4. *Service Responsibilities of the Contractor*

- (a) *Maintenance.* Contractor shall maintain the Software and equipment so that it operates in conformity with all descriptions and specifications herein and in the applicable Software License Agreement and Contract No. _____ between the Contractor and the County, including specifications for the performance of all improved or modified versions of the Software and equipment which the County has been licensed to use. Contractor shall correct all Errors discovered by the County.
- (b) *Support and Response Time:* In the event that County detects any Error, defect or nonconformity in the Software and equipment, Contractor shall furnish complete off-site telephone support, in the form of consultations, assistance and advice on the use or maintenance of the Software and equipment, within four (4) hours of County's request. In the event that such problem in the Software and equipment is not corrected within twenty-four (24) hours of the initiation of such off-site telephone support, County shall submit to Contractor a listing of the output and all such other data which Contractor reasonably may request in order to reproduce operating conditions similar to those present when the Error, defect or nonconformity was discovered. In the event that such problem is not corrected within five (5) working days after Contractor receives from County a listing of output and other data, Contractor shall within the next twenty-four (24) hours provide on-site Service. Contractor shall implement

temporary workaround procedures and shall demonstrate to County the good faith and diligent initiation and prosecution of corrective measures for all such problems involving the Software within _____() hours of the commencement of such on-site Services. **NOTE: The turnaround times allowed for repairs are a business decision for the user of this Maintenance Agreement. The times included in this paragraph are suggestions.**

In the event it is determined that the problem was due to County Error in the use of the Software and equipment, as opposed to an Error, defect or nonconformity in the Software and equipment itself, County shall pay Contractor Contractor's standard commercial time and materials rates for all on-site Service provided plus Contractor's actual travel and per diem expenses, provided that this paragraph shall only be applicable if Contractor makes an on-site repair visit to a King County location.

5. Responsibilities of the County

- (a) The County shall notify the Contractor immediately following the discovery of any Error, defect or nonconformity in the Software and equipment, unless such Error defect or nonconformity is discovered after 5:00 p m. on a business day. In that case, the County shall notify the Contractor by 10:00 a.m. on the following business day. In the event that an Error, defect or nonconformity is discovered between 5:00 p.m. Friday and 9:00 a.m. Monday, the County shall notify the Contractor of the Error, defect or nonconformity by 10:00 a.m. on the Monday morning immediately following the weekend during which the Error, defect or nonconformity was discovered. The period within which Contractor is obligated herein to provide telephonic off-site support shall not commence until such time as the Contractor receives the County's notification of the Error, defect or nonconformity.
- (b) The County, upon detection of any Error, defect or nonconformity in the Software and equipment, shall, if requested to do so by the Contractor under Section 5(b) submit to the Contractor a listing of output and any such other data which Contractor reasonably may request in order to reproduce operating conditions similar to those present when the Error occurred or the defect or nonconformity was discovered, as the case may be.

6. Charges

- (a) *Computation.* Charges shall be as stated in Attachment B, Price. These charges shall cover all Services provided under this Maintenance Agreement.
- (b) *Price Protection.* The charges set forth herein for the Services shall not be increased for a period of _____() years after commencement of Services pursuant to this Maintenance Agreement. Thereafter, such prices only may be increased as identified in Attachment B, Price, Contract No. _____, not to exceed the annual CPI rate or _____() percent (___%), whichever is less, per year over the previous year's price.

7. Renewal of the Agreement

The County shall have the option to renew this Maintenance Agreement for annual periods so long as the Software and equipment has been licensed to County under the Software License Agreement, Attachment ____ of Contract No. _____, between King County and Contractor.

8. *Warranties*

- (a) The Contractor warrants that it will maintain the Software and equipment so that such Software and equipment will be free from significant programming Errors and from defects in workmanship and materials and shall conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the Software License Agreement and Contract No. _____ applicable to the Software, and so that the Software will operate in conformity with all improvements, additions, or modifications of the Software installed at County's site or sites. The Services will be performed in a timely and professional manner by qualified maintenance technicians familiar with the Software and its operation, and the Services shall conform to the standards generally observed in the industry for similar Services.
- (b) This warranty shall not be affected by County's modification of the Software, including source code, so long as Contractor can discharge its warranty obligations notwithstanding such modifications or following removal by County.
- (c) The performance of the Services by Contractor will not in any way constitute infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information or non-disclosure rights of any third party.
- (d) Services provided by the Contractor will be in compliance with all applicable laws, rules and regulations.
- (e) Equipment maintenance or Software updates shall not degrade the _____ System, cause a breach of any other warranty or require the County to purchase new or additional hardware or Software for continued operation of the _____ System.

9. *Termination*

The termination provisions of Contract No. _____ shall apply to this Maintenance Agreement, except as noted below.

- (a) *Termination of Software License Agreement.* If either the Licensor of the Software or the County terminates the Software License Agreement for any reason provided therein, County shall have the right without penalty to terminate this Maintenance Agreement at the same time.
- (b) *Rights and Obligations of the Parties on Termination.* In the event that this Maintenance Agreement is terminated as a result of the occurrence of a Force Majeure, or other cause except default by the Contractor, each party shall return to the other all data, materials, and other properties of the other party then in its

possession, except that County may retain for a reasonable period such materials as may facilitate securing the services of another Contractor.

10. Indemnification

The indemnification provisions of Contract No. _____ shall apply.

11. Assignment

The assignment provision of Contract No. _____ shall apply.

12. Miscellaneous

- (a) *Insurance.* Contractor shall maintain in effect at all times during the term hereof, insurance as described in Contract No. _____ between King County and the Contractor.
- (b) *Cumulation of Remedies.* All remedies available to either party for breach of this Maintenance Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- (c) *Severability.* Any invalidity, in whole or in part, of any provision of this Maintenance Agreement shall not affect the validity of any other of its provisions.

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Maintenance Agreement duly authorized by all necessary and appropriate corporate action to execute this Maintenance Agreement.

CONTRACTOR:

KING COUNTY:

By:_____

By:_____

Its:_____

Its:_____

APPENDIX A

I. Description of Services.

- (a) The Software to be maintained by Contractor is identified as follows:
- (b) The maintenance Services to be performed by the Contractor are as follows:
- (c) *Specifications* and Performance Standards of the Software:

II. The following proposals, selling literature and other documents are attached to this Appendix and incorporated into the Maintenance Agreement by reference:

III. Location of Services.

The Maintenance Services to be performed by the Contractor shall be conducted at the following locations:

[maint6.doc.rev.1/01]

ATTACHMENT Q

SOFTWARE LICENSING AGREEMENT

This agreement made this _____ day of _____, 20____, by and between _____ (hereinafter "Licensor") organized under the laws of the State of _____ and having its principal place of business at _____ and Licensee, (hereinafter "County") with its principal place of business at _____, Seattle, WA 98____.

TERMS AND CONDITIONS

1. Entire Agreement. This agreement, as an attachment to Contract No. _____ together with the following Exhibits (**note: identify each Exhibit by date and type of document such as letter, sales brochure, response to RFP etc.**) referenced herein, constitutes the agreement between Licensor and the County.

2. License.

2.1. Licensor hereby grants the County a nonexclusive, nontransferable and perpetual license to use the _____ Software (hereinafter "Software") as described in Exhibit A, including the source code(s) and related documentation under each program element. The licensed Software shall include in its meaning, in addition to the description contained in Exhibit A, any improvements, additions, or modifications of the version or versions of the Software which Licensor licensed to the County to use and materials related thereto and all materials, documentation and technical information provided to the County in written form and identified in Exhibit A for use in connection with the Software.

2.2. The County may utilize the object code version of the Software as required by County on hardware owned or leased by the County.

2.3. The County may use and copy documentation pertaining to the Software as supplied by Licensor (hereinafter "Documentation") as required to exercise the license granted herein.

2.4. The County shall be permitted to make back up copies of the Software and Documentation in accord with the back up procedures followed by the County. The County may copy, reproduce, modify, adapt or translate the Documentation as it deems necessary provided that such copies are used in accord with the License granted herein and any such copies of the Documentation are utilized solely by County.

3. Delivery and Installation; Modification of Software and Source Code. Licensor shall deliver the Software at the time, place and order of delivery as described in Exhibit A. Licensor shall install the software and provide necessary support services, including training, at no additional charge. Licensor shall notify the County that the program is ready for acceptance testing no later than the date set forth in Exhibit A. Licensor shall improve, add to, or otherwise modify the software and the source code prior to or at the same time any modifications of the same are available to any of Licensor's customers.

4. Source Code. Concurrent with delivery of the Software hereunder, Licensor shall place a copy of the source code for the Software into escrow pursuant to the Escrow Agreement executed with this Software License Agreement. Licensor shall improve, add to, or otherwise modify the source code prior to or at the time any modifications are available to Licensor's customers. Should the licensor default at any time during the performance of Contract No. _____ or during the term of the Maintenance Agreement, or meet any other default condition described in the Source Code Escrow Agreement, then the County shall have the right to obtain the fully licensed source code as further described in the Source Code Escrow Agreement.

5. Acceptance Testing.

5.1 Within _____ (____) days of Licensor's notification to the County that the program has been installed and County personnel are trained to permit them to begin acceptance testing, the County shall commence performing the acceptance tests pursuant to the procedures, criteria and descriptions set forth in Exhibit A.

5.2 Acceptance testing shall be conducted on the _____
(note: the location of the testing site must be identified either on site at County or on site at Licensor's place of business) site and equipment in order to determine whether the Software performs according to the functions, specifications and descriptions of the Software; to ensure that the Software will operate as contracted in the business environment of the County; is capable of running on a variety of data without failure; meets the run times required by the County and otherwise meets the Scope of Work requirements established in Contract No. _____.

5.3 When, at the sole discretion of the County, the acceptance tests establish that the Software is performing satisfactorily, the County shall send written notification of acceptance to the Licensor. The date of the written notice of acceptance shall commence the License granted by Licensor herein.

5.4 If, in the sole discretion of the County, the Software can not meet the acceptance criteria and fails the acceptance test(s), the County shall promptly notify Licensor in writing. The notification shall specify, with as much

detail as possible, the area or areas in the Scope of Work where the Software failed to pass acceptance testing.

5.5 The Licenser shall be given _____ (__) days to correct the deficiencies or modify the Software so that it performs within the contracted Scope of Work. Licenser shall, within the time frame specified by the County, notify the County that the corrections or modifications have been made and present the Software for further acceptance testing.

5.6 Should the Software fail to perform in accordance with the Scope of Work after the second round of acceptance testing, the County shall notify the Licenser, and at the County's option may terminate the contract for non-performance in accordance with the Standard Contractual Terms and Conditions.

5.7 Nothing in the preceding paragraphs shall act as a waiver of any contractual rights identified in Contract No. _____.

5.8 If the County terminates Contract No. _____ or this License Agreement for non-performance or default by the Licenser, the County shall promptly return the Software and associated documentation and materials to Licenser at Licenser's expense and shall have the right, to receive prompt reimbursement of all payments made to Licenser under this Agreement or Contract No. _____.

6. Payment. In consideration of the License granted to the County by this Agreement, the County shall pay to Licenser the License Fee as identified in Attachment B, Price, of Contract No. _____ upon successful completion of the acceptance tests, contingent upon the Licenser's satisfactory completion of all contractual obligations related to this License Agreement. Payment invoicing shall be in accordance with the Payment Procedures identified in Contract No. _____, Standard Contractual Terms and Conditions.

7. Improvements and Other Modifications.

7.1 Improvements in the Software, including any additions or modifications made by the Licenser to or in the software at any time after acceptance testing, which improve the efficiency and effectiveness of the basic program functions and which do not change the agreed upon functions, shall be furnished to the Customer at no charge.

7.2 If, after acceptance testing, the Licenser shall develop improvements or changes to the Software which change the basic program functions or add new program functions, the County shall have the right to obtain such program changes upon payment as follows: a) Licenser's standard prices then in effect for installing such changes, or b) the difference between the then current price of the Software including such changes and the applicable fees and charges for the Software reflected herein. The warranties in this Software License Agreement shall apply to any improvements or changes to the Software obtained by the County after acceptance testing.

8. Termination. The termination provisions of Contract No. _____ shall be applicable to the termination of this License Agreement.

9. Warranties.

9.1 Software. Licensor warrants that on the Acceptance Date, the Software furnished hereunder shall be free from significant programming errors and from defects in workmanship and materials and shall operate and conform to the performance capabilities, specifications, functions and other descriptions and standards as identified in the Scope of Work in Contract No. _____ and all supplemental information provided by Licensor.

9.2 Services. Licensor warrants that the Services shall be performed in a timely and professional manner by qualified professional personnel; and that the Services and Software shall conform to the standards generally observed in the industry for similar Services and Software.

9.3 The warranties described in paragraphs 9.1 and 9.2 herein shall not be affected by the County's modification of the Software, including source code, so long as Licensor can discharge any warranty obligations

9.4 Licensor warrants that is has full power and authority to grant the rights by Licensor to the County with respect to the Software without the consent of any other person.

9.5 Licensor warrants that performance of the Services by Licensor and the License to the County to use the Software and Services, including copying, will not in any way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure or other right of any third party.

9.6 Licensor warrants that the Software, its License to and use by the County, and the performance by Licensor of the Services, shall be in compliance with all applicable laws, rules and regulations.

9.7 If at any time during the _____ (__) month period immediately following the Acceptance Date, Licensor or the County shall discover one or more defects or errors in the Software or any other aspect in which the Software fails to meet the provisions of the warranty requirements herein, or the Scope of Work, Licensor shall, at its own expense, promptly correct the defect, error or non-conformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein.

9.8 Licensor warrants the tapes, diskettes or other media delivered to the County to be free of defects in materials and workmanship under normal use for _____ (__) days from the date of receipt by the County. During the

_____ (__) day period, the County may return defective media to Licensor and it will be replaced without charge to the County.

9.9 In the event that the Software and/or Documentation are held to be infringing or the Licensor believes the Software and/or Documentation are believed to be infringing, Licensor shall at its sole expense resolve the infringement in a manner agreed to by the County using one of the following methods: a) modify the Software and/or Documentation so that it is non-infringing; b) obtain a license for the County to continue using the Software and/or Documentation; c) substitute the Software and/or Documentation with other Software and/or Documentation reasonably suitable to the County; or d) terminate the license for the infringing Software and/or Documentation and refund the license fees and all other contract costs and fees paid for the infringing products.

9.10 Licensor warrants that the Software provided is free from intentional viruses or other intentional programming defects.

9.11 Licensor warrants that future maintenance or software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or software for continued operation of the Software.

9.12 THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RESPECTING THIS CONTRACT OR THE PRODUCTS PURCHASED OR LICENSED HEREUNDER.

10. Limitation of Liability

10.1. Patent and Copyright Indemnity

Licensor agrees to defend, indemnify and hold harmless County from any infringement claim, so long as County gives Licensor prompt notice of any infringement claim brought against County regarding the Software and County gives Licensor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Licensor shall, in its reasonable judgment and at its option and expense: (i) obtain for County the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Licensor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that must be returned to County. Licensor shall have no liability to indemnify or defend County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County; or (ii) use of the Software other than in accordance with the Documentation.

Notwithstanding this section, County retains the right and ability to defend itself against any claims that the Licensed Software infringes any patent or copyright. If County chooses to defend itself or enter into a settlement agreement without Licensor's prior knowledge, consent, and specific agreement to pay costs, County understands that Licensor will not indemnify County for its costs and expenses.

10.2 Indemnification For All Other Actions

Each party shall protect, defend, indemnify and save harmless the other party, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to persons and/or damage to tangible property, arising out of or in any way resulting from each party's own acts or omissions to the extent each party is liable for such acts or omissions. In the event the indemnified party incurs any costs including attorneys fees to enforce the provisions of this paragraph, all such costs and fees shall be recoverable from the Indemnitor.

10.3 Worker's Compensation Liability.

Licensor's indemnification obligation shall include but is not limited to, all claims against County by an employee or former employee of the Licensor or its sub-Licensors, and the Licensor expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees shall be allowed to the prevailing party.

10.4 Limitation of Liability

Except for County's intentional and willful violations of Licensor's intellectual or proprietary rights, which can be attributed to County management, neither party will be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs entitled "Patent and Copyright Indemnity" and "Indemnification for all other Actions" either party's liability for damages to the other under this Agreement shall be limited to _____ (____%) of the amount paid or received under this agreement. The parties agree to the allocation of liability of risk set forth

11. Miscellaneous.

11.1 The terms and conditions of Contract No. _____ shall have precedence and control over any term and condition of this Software License Agreement which may be in conflict with Contract No. _____. To the extent that this License Agreement is silent with

respect to terms and conditions in Contract No. _____, the terms and conditions in Contract No. _____ shall control.

11.2 Severability. Any invalidity, in whole or in part, of any provision of this License Agreement shall not affect the validity of any other of its provisions.

11.3 Confidential Information. By virtue of this Software License Agreement, the parties may have access to information that is confidential to one another (hereinafter "Confidential Information"). Confidential information shall be conspicuously marked as such and limited to the Software, Documentation and information related thereto as well as all information marked confidential. Confidential Information shall not include information which a) is or becomes a part of the public domain through no act or omission of the other party; or b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or d) is independently developed by the other party. This agreement shall be subject to the public disclosure laws of the State of Washington.

11.4 Assignment to Other Public Entities. County shall have the right to assign its rights and obligations under this Software License Agreement to any other public entity, provided that any permitted assignment or transfer of rights shall bind the assignee public agency to the terms and conditions of this License Agreement.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be executed and do each hereby warrant and represent that their respective signatory who signature appears below has been and is on the date of this Software License Agreement duly authorized by all necessary and appropriate corporate action to execute this Software License Agreement.

LICENSOR:

COUNTY

By: _____

By: _____

Its _____

Its: _____

ATTACHMENT Q
SOFTWARE LICENSING AGREEMENT

1. DELIVERY: The software shall be delivered on _____, 20 ____, and time is of the essence, to the following sites:

2. DESCRIPTION OF SOFTWARE:

(a) The performance capabilities, performance characteristics, specifications, functions, hardware requirements, and time characteristics, on specified computer equipment, of the Software are as follows:

(b) The following manuals, selling materials and other documentation provided by Licensor to describe the Software and its performance characteristics and capabilities are attached to Contract No. _____ as Attachment(s) _____ and are incorporated by reference to the Software License Agreement as if fully stated herein.

3. DESCRIPTION OF SERVICES:

The following installation, support and other services shall be provided by Licensor to County. Such services shall be in addition to the installation and support service necessary for the delivery and installation of the Software and enable the County to conduct the acceptance tests, which services shall be furnished free of charge.

4. ACCEPTANCE TESTS:

(a) Licensor shall have the Software installed and ready for testing, and shall complete such training or County's personnel as is necessary for the conduct of such testing, no later than _____.

(b) The acceptance tests required by Section 5 of the Software License Agreement shall be as follows:

5. SOFTWARE LICENSE FEE:

The Software License Fee shall be _____ and shall be paid as follows:

[intellec\softwar9.doc.rev.1/2001]

ATTACHMENT R
NONDISCLOSURE AGREEMENT

Data Information Management Systems, Inc. ("DIMS") and King County, Washington (the "County") are entering into this Nondisclosure Agreement ("Agreement") on _____, 2005.

1. Each of the undersigned intends to disclose (in such capacity, the "Disclosing Party") to the other undersigned party (in such capacity, the "Recipient") information that is maintained in confidence by the Disclosing Party pursuant to law, by contract or for commercial advantage, including, in the case of the County, voter registration data and, in the case of DIMS, voter registration software and documentation (the Disclosing Party's "Information"). The Recipient shall not (a) use the Disclosing Party's Information other than in connection with the evaluation of DIMS' voter registration software (the "Purpose") or (b) disclose Disclosing Party's Information to anyone other than the Recipient's employees who need to know or use the Disclosing Party's Information for the Purpose. Without limiting the foregoing, the Recipient shall (i) protect the proprietary nature of the Disclosing Party's Information with the same degree of care as it exercises for its own Information, and (ii) adhere to all laws, including export laws, in using the Disclosing Party's Information.
2. This Agreement does not apply to information (a) after it has become publicly known through no act or omission in breach of this Agreement, (b) that, when disclosed, is already in Recipient's possession without breach of any legal obligation, or (c) that is disclosed to comply with applicable law or governmental order; provided the Disclosing Party is allowed the opportunity, within the law, to contest such disclosure.
3. THE RECEIVING PARTY ACKNOWLEDGES THAT THE DISCLOSING PARTY'S INFORMATION IS PROVIDED AS IS AND THAT THE DISCLOSING PARTY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND REGARDING SUCH INFORMATION.
4. Other than permitting the Recipient to use the Disclosing Party's Information for the Purpose, the Disclosing Party grants no license, assignment or other interest in the Disclosing Party's Information. The Recipient shall return or destroy the Disclosing Party's Information promptly after the Disclosing Party so requests in writing. This Agreement only applies to Information while permitted to be in the Recipient's possession. This Agreement does not obligate the Disclosing Party to disclose, or to continue to disclose, any information to the Recipient.
5. The Recipient acknowledges and agrees that its breach of this Agreement may cause irreparable harm to the Disclosing Party's interests, for which money damages would be an inadequate remedy, and that the Disclosing Party may seek injunctive or other equitable relief for such breach.
6. This Agreement is governed by the substantive laws of the State of Washington, without regard to any conflict-of-law principles or other similar provisions that would result in the application of any other laws. This Agreement is the complete

and final expression of the parties agreement regarding its subject matter and supersedes all prior or contemporaneous agreements or statements between or by the parties, written or oral.

The parties have executed this Agreement by their duly authorized representatives as of the date first written above.

**DATA INFORMATION
MANAGEMENT SYSTEMS, INC.**

KING COUNTY APPROVED BY:

Signature

Signature

Name and Title

Name and Title